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REMARKS/ARGUMENTS

Claims 3 and 11-20 now stand in the present application. Reconsideration and favorable action is respectfully requested.

Allowable Subject Matter:

Applicant notes with appreciation the Examiner's indication of allowable subject matter in claim 3. For the following reasons, Applicant submits that claim 3 (and all other claims) is in full conformance with 35 U.S.C. §112, first and second paragraphs. Claim 3 is thus allowable.

Claim Objection:

Claim 13 was objected to because of an alleged informality. In particular, section 22 (page 7) of the Office Action alleges "... mentions nothing about 'the user having made the least usage over the previous period'. Possible antecedent basis problem." Claim 13 has been editorially amended to resolve any possible antecedent basis problem (which has not, in any event, been specifically alleged).

Applicant therefore requests that the objection to claim 13 be withdrawn.

Rejection under 35 U.S.C. §112, First Paragraph:

Claims 3 and 7-12 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant traverses this rejection.

With respect to claims 3, 11, 12 and 17, the Office Action alleges that the limitation "users currently require access" and "user requiring access" do not comply with the written description requirement. Independent claims 3, 11, 12 and 17 have been amended to recite

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“users currently ~~require access~~ have active connections” or similar language. This limitation is supported by, for example, page 7, line 10 of the original specification which makes explicit reference to “active connection.” The Office Action acknowledges that “The original specification only discusses about users ‘currently on line’ and ‘have active connections.’”

With respect to claim 12, the Office Action alleges that “the written description fails to disclose the corresponding structure, material or acts for the claimed function.” Applicant disagrees with this allegation. For example, the claimed functions are adequately disclosed by Figs. 2-3 and pages 6-7 of the original application. In more detail, the above-noted portions of the original application describe how server 11 provides main functionality 20 to execute steps 30-34. By way of example, page 6, line 33 of the original specification discloses “the users are ranked in order of priority (step 32)” thereby providing an adequate written description for the claimed “sorting means for ranking” required by claim 12. The description of the server 11 (hardware) providing functionality module 20 for executing step 32 (and other steps) refutes any allegation that “access is performed entirely in software.” Moreover, the allegation that the specification “fails to disclose any program or algorithm” is also unfounded in light of the detailed algorithm/flowchart of steps illustrated in Fig. 3 and described in pages 6-7 of the original specification.

Applicant therefore requests that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

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Rejection under 35 U.S.C. §112, Second Paragraph:

Claims 3 and 11-17 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant traverses this rejection.

Section 29 (page 9) of the Office Action alleges that the phrase “a measure, made over a previous period, of usage of that resource relative to usage made by other members of the said plurality of users” is unclear. To expedite allowance (e.g., allowance of claim 3) of the present application, this limitation has been deleted from claims 3, 11 and 12.

With respect to the comments provided in section 30 (page 9) of the Office Action alleging “the specification doesn’t expressly recite the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function”, Applicant submits that this allegation is unfounded for the reasons discussed above with respect to the rejection under 35 U.S.C. §112, first paragraph.

Applicant therefore requests that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Rejections under 35 U.S.C. §103:

Claims 4 and 9-12 have been rejected under 35 U.S.C. §103 as allegedly being unpatentable over Amalfitano (U.S. ‘557) in view of Marsh (U.S. ‘519) in view of Otis (U.S. ‘241). Applicant traverses this rejection.

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In order to establish a *prima facie* case of obviousness, all of the claim limitations must be taught or suggested by the prior art. The combination of Amalfitano, Marsh and Otis fails to teach or suggest all of the claim limitations. For example, the combination fails to teach or suggest “to place each member of the plurality of users that currently have active connections to the resource in a rank order relative to one another, the ranking being made according to the measurements, made using the measurement means, of the usage that each member made of the resource” as required by independent claim 3 as its dependents. Similar comments apply to independent claims 11 and 12.

Page 12 of the Office Action admits that “Amalfitano doesn’t distinctly teach ranking users relative to one another based on usage.” Page 12 then relies on Marsh to resolve this admitted deficiency. In particular, page 12 of the Office Action alleges “Marsh from the same or similar fields of endeavor teaches: ranking users relative to one another based on usage (Marsh, page 1, paragraph 12, ranking users in order based on usage parameter).”

However, Applicant submits that this portion of Marsh ‘519 (which is a CIP of application no. 09/758,824 [now U.S. Patent No. 7,072,639] filed January 11, 2001) is not supported by U.S. application no. 09/758,824 and thus is only entitled to the June 8, 2005 U.S. filing date of Marsh ‘519. Indeed, the only mention of ranking in U.S. application no. 09/758,824 (now U.S. Patent 7,072,639) is a comparison of efficiency (cost-effectiveness) of individual service plans to determine which is the best service of several offered by a service provider for an individual user.

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In other words, the teachings of paragraph 12 of Marsh '519 regarding the alleged ranking of users is entitled only to the June 8, 2005 filing date of Marsh '519 and not the parent filing date of U.S. Application No. 09/758,824 (now U.S. Patent No. 7,072,639). The June 8, 2005 filing date of Marsh '519 is after the September 8, 2004 filing date of the present national phase application of international application no. PCT/GB2004/003825 on September 8, 2004. The June 8, 2005 filing date of Marsh '519 is also after the filing of English-language application GB0322770.9 (from which the present application claims priority) on September 29, 2003. Accordingly, the portion of Marsh '519 relied upon in the rejection under 35 U.S.C. §103 does not qualify as "prior art" against the present application.

Accordingly, it is not deemed necessary at the present time to discuss the technological deficiencies of the Marsh '519 reference alone or in combination with the cited Amalfitano and Otis references. Similar comments apply to the rejection of claims 14 and 15 under 35 U.S.C. §103 over Amalfitano in view of Marsh, Otis and Chuah (U.S. '416).

Section 15 (page 4) of the Office Action alleges that the claim language is not specific about how the "ranking according to usage" required in the claims is done. However, as described in MPEP section 2173.04, "Breadth of a claim is not to be equated with indefiniteness *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971)." Moreover, applying a restriction factor "according to" (as explicitly recited by the claims) the position or rank clearly implies some logical relationship between the rank and the restriction factor -- rather than the randomization suggested by the Office Action.

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With respect to the comments provided in section 17 (pages 4-5) of the Office Action, the Office Action appears to have overlooked the word “thereby” in the passage the Office Action refers to: the restriction of availability of the resource is not a separate step, but the consequence of the preceding ones. The previous steps are thus not redundant because without them the result (as indicated by “thereby”) would not have happened at all.

With respect to the comments made in section 21 (pages 6-7) of the Office Action, the Office Action continues to allege that “unique” is ambiguous because it depends on the set being considered, in particular what properties are being considered. However, the set in question here is not in doubt: it is a set of numerical values. Each member of the set of numbers is characterized only by its numerical value. It can only be unique (or not), in respect of that one characteristic. Either all of the ranked values are different (unique) or they are not (two or more of them are equal).

New Claims:

New claims 18-20 have been added. New dependent claim 20 is deemed to be allowable for at least the reasons discussed above with respect to claim 12 and with respect to its additional limitation reciting “wherein the restriction factors allocated to adjacently ranked users differ by a ratio which is constant over all users.” Applicant notes that this limitation is similar to the last limitation required by allowable claim 3.

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Also like allowable claim 3, independent claim 18 requires "wherein the restriction factors allocated to adjacently ranked users differ by ratio which is constant over all users." Claim 18 is thus deemed to be allowable.

Independent claim 19 requires, *inter alia*, "placing, using the computer server, each member of the plurality of users that currently have active connections to the resource in a rank order relative to one another, the ranking being made according to the measurements of the usage that each member made of the resource over the predetermined period, wherein the rank order is ordered from least usage to most usage." Applicant therefore submits that claim 19 is allowable.

Conclusion:

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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